

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.07.2018

Delivered on: 25-07-2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.2081 and 5906 of 2011
and MP.NO.1,1,2&2/2011

M.Kadambavanasundaram .. Petitioner in
WP 2081 of 2011
S.Muthusami .. Petitioner in
(P1 amended as per order dated 13.02.2017 in WP.NO.5906/2011

Vs

1. The Government of Tamil Nadu,
rep. by its Principal Secretary to
Government, Finance (Pay Cell)
Department, Chennai-600 009. .. 1st respondent in
both writ petitions
2. The Agricultural Production Commissioner
and Secretary to Government,
Agriculture (AU) Department,
Chennai-600 009. ... 2nd respondent in
WP 2081 of 2011
3. The Joint Secretary to Government,
Agriculture (AU) Department,
Chennai-600 009. .. 2nd respondent in
WP 5906 of 2011
4. Tamil Nadu Agricultural University,
rep. by its Registrar,
Coimbatore-641 003. .. 3rd respondent in
both writ petitions

Prayer in W.P.2081 of 2011: Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to Call for the records of the respondents relating to Letter No.15554/AU/2010-4 dated 26.7.2010 on the file of the 2nd respondent and quash the same in so far as they relate to the petitioner herein and directing

the respondents to fix the revised pension of the petitioner on the basis of the Revised Minimum Basic Pay fixed for the incumbent Professor as per Fitment Table No.5 appended to G.O.Ms.No.39 Agriculture (AU) Department dt.1.3.2010 by taking into consideration Minimum of the Pay in the Pay Band instead of Minimum of the Pay Band.

Prayer in W.P.5906 of 2011: Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the Respondents relating to Letter No.15554/AU/2010-4 dated 26.07.2010 on the file of the 2nd Respondent and quash the same in so far as they relate to the Pre-2006 Professors retired from the 3rd Respondent University and directing the Respondents to fix the revised pension of the above mentioned Pre-2006 Professors on the basis of the Revised Minimum Basic Pay fixed for the incumbent Professor as per Fitment Table No.5 appended to G.O.Ms.No.39 Agriculture (AU) Department dated 01.03.2010 by taking into consideration Minimum of the Pay in the Pay Band instead of Minimum of the Pay Band.

For Petitioner : Mr.K.Doraisami, SC
for Mr.Muthumani Doraisamy

For Respondents : Mr.J.Pothiraj, Spl.G.P.-R1&R2
Mr.Abdul Saleem for R3

COMMON ORDER

Since in both the Writ Petitions, the same impugned order is being challenged in regard to denial of pensionary benefits in terms of Fitment Table No.5 annexed to G.O.Ms.No.39 Agriculture (AU) Department dated 01.03.2010, both Writ Petitions are taken up together for final disposal vide this common order.

2. Initially, Writ Petition in W.P.No.5906 of 2011 was filed by Tamil Nadu Agricultural University Pensioners Association and another Writ Petition in W.P.No.2081 of 2011 was filed by an individual retired Professor. However, on objections being raised whether an Association could file such a writ petition, a memo was filed on 13.2.2017 confining the said writ petition only in respect of one Thiru S.Muthusami who was the deponent of the affidavit which was filed in support of the writ petition.

3. Both the writ petitioners are octogenarians who have retired long ago as Professors after having served for several years in 3rd respondent University. Vide G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009, the Government of Tamil

Nadu was pleased to order revision of scales of pay and allowances, etc. for the employees of State Government, local bodies, etc. and in pursuance of which, Tamil Nadu Revised Scales of Pay Rules 2009 were notified in 2009. Pursuant thereto, another G.O.Ms.No.39 Agriculture (AU) Department dated 1.3.2010 was issued by the Government, implementing the revised UGC scales of pay to the teaching staff of 3rd respondent University with effect from 01.01.2006. In the above Government Orders, the existing pre-revised scales and the revised Pay Band + Academic Grade Pay for various posts have been shown separately in Fitment Tables as follows:

(i) Associate Professor and Assistant Professor (SC) with three years of service.

Span of years	Existing Scale Rs.12000-420-18300 Pre-Revised				Revised Pay Band +Academic Grade Pay Rs.37400-67000+Rs.9000		
					Revised		
1	13260	6630	4774	24664	37400	9000	46400
2 to 16							

(ii) Professor

Span of years	Existing Scale Rs.16400-450-20900-500-22400 Pre-Revised				Revised Pay Band +Academic Grade Pay Rs.37400-67000+Rs.10000		
					Revised		
1	16400	8200	5904	30504	40890	10000	50890
2 to 16							

4. As per G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.06.2009, "pay" has been defined in para 2(c) that- "pay in the pay band" means pay drawn in the running pay bands specified in the Schedule". The said G.O. was implemented with effect from 1.1.2006. As per the Schedule to the G.O., the existing pay scale of Rs.17400-500-21900 was revised with Pay Band Rs.37400-67000 + Grade Pay of Rs.10,000. In pursuance of revised pay scales, a further G.O. was issued in G.O.Ms.No.235 Finance (Pay Cell) Department revising the pensionary benefits.

According to the said G.O., the pension has to be revised in terms sub clause (vi) of Para 2, which reads as under:

"2(vi). The fixation of pension shall be subject to the provision that the revised pension in no case shall be lower than fifty per cent of the minimum of the pay in the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of pensioners/Family Pensioners for whom pension/family pension has to be revised beneficial to them at 50%/30% of the minimum of the Pay + Grade Pay applicable to the post as on 1-1-2006, such of the Pensioners/Family Pensioners shall apply to the Pension sanctioning authorities through the department they last served in the prescribed form appended to his order. The authorities concerned shall revise both the Pension and Family pension of the existing pensioners"

5. As Annexure to the said G.O., the then existing scale of pay of Rs.17,400-500-21900 was revised in the Pay Band of Rs.37400-67000 with grade pay of Rs.10,000/-. Thereafter, G.O.Ms.No.39 Agriculture (AU) Department, dated 1.3.2010 was issued recommending revision of UGC pay scales for several categories of teaching staff, like Librarians, Director of Physical Education, Professors, Assistant Professors and Associate Professors, etc. Various Fitment tables were annexed providing for fixation of pay.

6. As far as present case on hand is concerned, it is sufficient to refer only Fitment tables 4 and 5 in order to appreciate the claim of the petitioners for revision of their pensionary benefits. As far as Fitment table 4 is concerned, in case of incumbent of Associate Professor and Assistant Professor (Selection Grade) with three years of service, their existing pay of Rs.12000-18300 was revised in the Pay Band of Rs.37400-67000 with annual grade pay of Rs.9000 and the minimum of pay in the Pay Band is Rs.37,400/- as what applicable to the Assistant Professors and Associate Professors as indicated above. As per Fitment table 5, the then existing pay scale of Rs.16,400-450-20000 was revised in the Pay Band of Rs.37400-67000 with grade pay of Rs.10,000/- for Professors, Librarians and Director of Physical Education. Accordingly, the revised basic pay would come to Rs.50,890/- (i.e. minimum pay as per Fitment table 5 is Rs.40890 + Grade pay of Rs.10000 = 50,890/-).

7. The grievance of the petitioners herein is that when the petitioners' pensionary benefits were sanctioned after coming into force the above said G.Os., the pension was calculated for these writ petitioners who retired as Professors with minimum

pay in the Pay Band, i.e. Rs.37,400-67000 was taken into account + academic grade pay of Rs.10000, which would come to Rs.47,400 and 50% of the basic pay i.e. Rs.23700 was the pension payable to the petitioners in terms of Sub clause (vi) of Para 2 of G.O.Ms.No.235 dated 1.6.2009. But the petitioners' claim is that they are entitled to the minimum of pay as provided in Fitment table 5, i.e. Rs.40890 in the Pay Band of Rs.37400-67000 + academic grade pay Rs.10000, in total Rs.50,890/- which is ought to be taken into consideration for the purpose of giving benefit of 50% of the basic pay as pension. Since the category of Professor is concerned, the minimum of pay as mentioned in the Fitment table is only Rs.40,890/- in the Pay Band of Rs.37,400-67000, in which case, they would be entitled to higher pensionary benefits. In these circumstances, the Association represented to the University to refix the petitioners' minimum pay as Rs.40,890 for the purpose of calculation of pension and not the minimum pay of Rs.37,400/- in the Pay Band of Rs.37,400-67000. The representation was forwarded to the Government by the University as per their communication dated 21.5.2010. In response to the representation which was forwarded to the 3rd respondent University, the Government conveyed its decision vide its communication dated 26.7.2010, stating that the pension which was calculated and paid to the petitioners was in order since the same was fixed as per sub clause 2(vi) of Para 2 of G.O.Ms.No.235, dated 1.6.2009. This letter dated 26.7.2010 holding that the pension which was sanctioned to the petitioners was in order, is the subject matter of challenge in both the writ petitions.

8. Mr.K.Doraisami, learned senior counsel appearing for the petitioners would contend that in terms of sub Clause 2(vi) of Para 2 of G.O.Ms.No.235 dated 1.6.2009, the petitioners are entitled to 50% of minimum of pay in the Pay Band + Grade Pay corresponding to pre-revised pay scale from which the petitioners had retired. According to the learned senior counsel, the minimum pay as far as the category of Professor was concerned, it was only Rs.40,890/- as provided in Fitment Table 5 and if the academic Grade pay of Rs.10000/- is added, it comes to Rs.50,890/- and from the said amount, 50% of the basic pay has to be calculated for the purpose of pensionary benefits payable to the petitioners. Unfortunately, the authorities concerned have taken into consideration the minimum of the Pay Band of Rs.37,400-67000 + Grade pay of Rs.10000/- and revised the pension of the petitioners. The learned senior counsel would submit that a reading of sub Clause (vi) of Para 2 of G.O.Ms.No.235 dated 1.6.2009 does not give room for any ambiguity since it provides for calculation of pension as 50% of the minimum pay in the Pay Band and not the minimum in the Pay Band and therefore, a proper interpretation of sub clause (vi) of Para 2 of G.O.Ms.No.235 dated 1.6.2009 would only mean that

the petitioners were entitled to pension on the basis of what is provided under Fitment Table 5 and not as provided in Fitment Table 4 which Fitment Table was only applicable for the category of Assistant Professors and Associate Professors etc. Therefore, the learned senior counsel would submit that the rejection by the Government on the ground that the pension was sanctioned in terms of sub clause (vi) of Para 2 of G.O.Ms.No.235 dated 1.6.2009 amounted to misreading of the provision and therefore, the impugned order of rejection is liable to be interfered.

9. In order to fortify his arguments, the learned senior counsel would also draw the attention of this Court to the definition of pay as extracted supra found in G.O.Ms.No.234 dated 1.6.2009, wherein, it is clearly stated that the pay in the Pay Band means "pay drawn in the running Pay Bands specified in the Schedule.". Therefore, if the running Pay Band is taken into consideration, the petitioners herein are entitled to the starting point of Pay Band, as Professors are concerned, being Rs.40,890/- as per Fitment Table 5 and not Rs.37,400/- which minimum pay was applicable for the category of Associate Professors and Assistant Professors (selection grade), etc. Therefore, the calculation of pension by the authority is not in order and the interpretation of the authority in regard to the sub Clause vi of Para 2 made in G.O.Ms.No.235 dated 1.6.2009 is not furtherance of what is intended by the Government. From the scheme of the Government Orders, it is very clear that when minimum 50% of the minimum pay is the basis for the calculation of revised pension, what is in the minimum pay in the Pay Band in respect of the categories in which, these petitioners stood retired ought to be taken into consideration and not the minimum of the Pay Band i.e. Rs.37,400/-. If such interpretation is allowed to stand, then it would mean that the petitioners though retired as Professors, would be placed on par with Associate Professors and Assistant Professors (selection grade). So far as pension is calculated with minimum pay in the Pay Band of Rs.37,400-67000 which means that unequals are treated as equals and the same cannot stand the test of judicial scrutiny. Therefore, the learned senior counsel would implore this Court to quash the impugned order and direct the authorities to recalculate the pension on the above said submissions.

10. Upon notice, Mr.J.Pothiraj, learned Spl.Government Pleader entered appearance for respondents 1 and 2 and Mr.Abdul Saleem for respondent No.3. A counter affidavit has been filed, wherein, it is reiterated what is stated in the impugned order of rejection. According to the counter affidavit, the Fitment Table and the running Pay Bands as defined in the G.Os. is applicable to the incumbent government servants and as far as the pensioners were concerned, the minimum pay of the Pay Band

alone was to be taken into consideration. In the counter affidavit, it is emphasized that the minimum pay as mentioned in Fitment Table 5 is applicable only to the existing Professors and not to the retired Professors and they are covered only by G.O.Ms.No.235 dated 1.6.2009 and as per sub clause (vi) of para 2 of G.O.Ms.No.235, their pension was calculated and paid. Therefore, it is not open to the petitioners to compare themselves with the existing incumbents as being retired Professors, they form a class by themselves and cannot claim any additional benefits which are only granted to the serving Professors. In fact, an additional counter affidavit has also been filed on behalf of first and second respondents by providing an example as to how the pension was fixed based on sub clause (vi) of para 2 which is extracted below:

Dr.Kadambavanasundaram M. Professor (Retd.)
(Fitment table 5 of G.O.Ms.No.39, Agriculture
(AU) Department dated 1.3.2010) Rs.37400-6700 + AGP
Rs.10000/-
Minimum Pay Rs.37400 + 10000 AGP = 47400
Pension as on 1.1.2006: Rs.47400/2 = Rs.23700
(i.e.50% of Rs.47400)

11. According to the learned Special Government Pleader, 50% of minimum of pay was calculated and paid to the petitioners. In fact, the learned Special Government Pleader took pains to emphasize the fact what is minimum pay contemplated in sub clause (vi) of para 2 of G.O.Ms.No.235 dated 1.6.2009 that it is only the minimum pay of Pay Band, i.e. Rs.37,400 and not Rs.40,890 as that would be applicable only to the existing Professors. According to the learned Special Government Pleader, the petitioners are trying to compare themselves with serving Professors and want additional benefits which they are otherwise not entitled to. According to the learned Special Government Pleader, originally the Government Order was only contemplating Fitment paid at 40% of existing basic pension, however, increased to 50% and therefore, it is not open to these petitioners to seek further increase in their pension. He would therefore submit that the claim of the petitioners on the stated grounds is unjust and cannot be countenanced both in law and on facts.

12. This Court has considered rival submissions of the learned senior counsel appearing for the petitioner and the learned Special Government Pleader for the respondents and perused the materials and pleadings on record.

13. The claim of these petitioners is that the pension has not been fixed in terms of sub clause (vi) of Para 2 of G.O.Ms.No.235 dated 1.6.2009 as intended since it is very clearly mentioned that "50% of the minimum pay in the Pay Band"

which means what is minimum of pay which is provided in the particular Pay Band as in this case is Rs.37,400-67000 and the minimum Pay as provided is only Rs.40,890/- and not Rs.37,400 which is minimum of the Pay Band and not minimum of the pay in the Pay Band. Unfortunately, it appears that the authorities concerned have lost sight of the subtle difference between the minimum of Pay Band and the minimum pay in the Pay Band. If the interpretation of the Government is to be accepted that even for the retired Professors, the minimum of the Pay Band alone would be taken into account for the purpose of calculation of pension + of-course, differential academic Grade Pay, thereby it would only mean that the petitioners herein who retired as Professors would only get Rs.500/- more than the persons who retired as Associate Professors or Assistant Professors as the case may be. Such situation could not have been the intention of the Government while granting revisional pensionary benefits. In any event, the category of Professors cannot be equated with the lesser category in terms of grant of pensionary benefits, the calculation of pension on the minimum Pay Band i.e. Rs.37,400-67000 cannot be the same for higher and lower categories which would amount to unequals being treated equally and cannot stand the test of Article 14 of the Constitution of India.

14. From a reading of sub Clause (vi) of Para 2 of G.O.Ms.No.235, dated 1.6.2009, it is very clear that what is provided as minimum of the pay in the Pay Band can only relate to what is minimum pay as provided in Fitment Table 5 enclosed to G.O.Ms.No.39, dated 1.3.2010. Any other interpretation of such provision will only lead into absurd and undesirable situation where lower and higher categories were treated alike for the purpose of pensionary benefits.

15. As rightly contended by the learned senior counsel that the pay has been defined in G.O.Ms.No.234 dated 1.6.2009 as being in the running Pay Band. The running Pay Band means, in the opinion of this Court is as per what is given in various Fitment Tables. As far as the category of Professors is concerned, the running Pay Band in accordance with the Fitment Table 5 starts from Rs.40,890 + individual academic Grade Pay of Rs.10000. As far as Grade Pay is concerned, it remains static at Rs.10000/- and the running Pay Band is progressively increased depending upon number of years of service put in by the existing Professors. In any event, the pay as defined in relation to running Pay Band is more relevant for the serving Professors. However, as far as the petitioners' claim is concerned, it will remain static which the minimum of the pay for the category of Professors, i.e. Rs.40,890/- in the Pay Band of Rs.37,400-67000 and the pension has to be calculated on that basis. In fact from the various Fitment Tables which were enclosed along with G.O.Ms.No.39 dated 1.5.2010, minimum of the

Pay Band of Rs.37,400 was not provided as minimum pay for the category of Professors in which case, this Court does not see any justification as to how and on what basis, the pension could be calculated by taking into account the minimum of Pay Band i.e. Rs.37400 for these petitioners who admittedly retired as Professors. Therefore, the authorities have completely gone wrong in fixing pensionary benefits of the petitioners on the basis of minimum of the Pay Band which is not found in any of the Fitment Tables enclosed to G.O.Ms.No.39 dated 1.3.2010. The calculation of pension as such by the authority as it appears from the record, cannot be either countenanced in law or on facts.

16. Moreover, as rightly contended by the learned senior counsel for the petitioners, it could not have been the intention of the authorities concerned, to confer such inequitable benefits to the category of Professors when their existing pay was much higher than the pay of Associate Professors and Assistant Professors. Therefore, it is needless to mention that when the pension is calculated, it must be commensurate with the pay scale which is made applicable to the category of Professors and the same cannot be calculated on the basis of the minimum of Pay Band i.e. Rs.37,400 which in fact is made applicable for the retired Associate Professors and Assistant Professors as the case may be. In fact, from all the Government Orders, it could be seen that prior to VI Pay Commission, there exist several pay scales in respect of various categories of posts in government service and after VI Pay Commission, certain common categories were identified and brought within certain Pay Bands and Government Servants were placed in such Pay Bands in the running pay depending upon the position held by them before the revision took place. Ofcourse, the Grade Pay in respect of each category concerned will remain static depending on the position held by the employee concerned. The arguments advanced on behalf of the Government that the Fitment Table 5 is applicable to the serving Professors and not to retired Professors, cannot be accepted as being valid piece of submission since what is provided in sub clause (vi) of Para 2 of G.O.Ms.No.235 dated 1.6.2009, 50% minimum pay in the Pay Band, pension has to be calculated on that basis. Once the pensionary benefits are being revised on the basis of revised pay scales, there cannot be any difference between serving Professors and retired Professors in the matter of application of pay in the Pay Band. Therefore, such argument which appears to be focal point for the Government appears to be preposterous and cannot be countenanced.

17. For the above said reasons, this Court is of the clear view that the petitioners have made out a case for grant of relief as sought for. In the circumstances, the impugned order

in Lr.No.15554/AU/2010-4 dated 26.07.2010 is set aside. The respondents are directed to calculate the pension payable to the petitioners as per Fitment Table 5 enclosed to G.O.Ms.No.39 Agriculture (AU) Department dated 1.3.2010 by taking into account the minimum pay as provided therein at Rs.40,890 + Grade pay of Rs.10000/- in total, Rs.50890/- and work out 50% of pension from the said total and pay the same to the petitioners and also similarly placed persons. It is made clear that the petitioners were entitled to arrears of differential pension on such re-calculation and the same also to be paid to them. The direction of this Court shall be complied with by the Government/competent authority within a period of eight weeks from the date of receipt of a copy of this order.

18. Accordingly, the Writ Petitions are allowed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

suk

1. THE PRINCIPAL SECRETARY TO GOVERNMENT,
GOVERNMENT OF TAMIL NADU,
FINANCE (PAY CELL)
DEPARTMENT, CHENNAI-600 009.

2. THE AGRICULTURAL PRODUCTION COMMISSIONER
AND SECRETARY TO GOVERNMENT,
AGRICULTURE (AU) DEPARTMENT,
CHENNAI-600 009.

3. THE JOINT SECRETARY TO GOVERNMENT,
AGRICULTURE (AU) DEPARTMENT,
CHENNAI-600 009.

4. THE REGISTRAR,
TAMIL NADU AGRICULTURAL UNIVERSITY,
COIMBATORE 641003.

+1cc to the Government Pleader, S.R.No. 50435

Order in
W.P.Nos.2081 & 5906 of 2011

nrjk(CO)
TR(03/08/2018)